Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

ADRIAN BONILLA MONTALVO

Petitioner,

V.

BANCO BILBAO VIZCAYA, FORMER BANCO COMERICAL MAYAGUEZ; NEFTALI ROSAS; EUGENIO RIVERA; DAGOBERTO MONTALVO IGNACIO; NECA MORTGAGE CORP.; EDDIE ACARON & FRANK RAMIREZ RAMIREZ

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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78 pp

QUESTIONS PRESENTED

Does the bank businesses constitute a question that involves reasons of public policy of the State, and of a great public interest which bars the application of the doctrine and defense of res judicata, when the legality of a judgment is questioned, in which the creditor bases his claim, which imposes the debtor the payment of interests in excess of the permitted by law, based upon a contract that contains interests which violate the Usury Act?

Does the laws of Puerto Rico and the United States that regulate the bank businesses lose effectiveness, when there exists a judgment dictated in violation to those laws which permit a creditor to collect interests in excess of the permitted by law under the foundation that the resolved in the judgment in which he bases his claim is res judicata?

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Adrian Bonilla Montalvo, requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit that was entered in this case on March 26, 1997.

———— * ————

OPINIONS BELOW

The judgment of the Court of Appeals for the First Circuit in case no. 96-2253 is not for publication. The First Circuit affirmed the Opinion and Order of the District Court for the District of Puerto Rico entered on August 20, 1996 in case no. 95-1029 (SEC), not published, that dismissed appeal from Opinion and Order entered on December 2, 1994 by the Bankruptcy Court for the District of Puerto Rico in case no. 87-00304 (GAC), Adversary 89-0029 (Docket #2), also not published.

The opinions are reprinted in the appendix.

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JURISDICTION

This lawsuit was filed in the United States Bankruptcy Court for the District of Puerto Rico, case no. 87-00304 (SEK), Adversary 89-0029 (Docket #2).

On December 2, 1994 the Bankruptcy Court for the District of Puerto Rico entered judgment granting full faith and credit to a judgment in which the respondent Banco Bilbao Vizcaya, former Banco Comercial Mayaguez, from here on "the bank" based it claim to collect interest for the amount of $24,996.91 at a 17% annual interest rate, according to judgment in case no. CS 81-1138 of state court of Puerto Rico, and denied fraud claim for collection of usurious interest presented by the petitioner in this case.

On August 20, 1996 the District Court for the District of Puerto Rico entered Opinion and Order dismissing an appeal of this petitioner in case no. 95-1029 (SEC).

On March 26, 1997 the Court of

Appeals for the First Circuit entered judgment that affirmed the opinion and order of the District Court for the District of Puerto Rico in case no. 96-2253.

Petitioner submitted a timely application to extend the time for filing this petition for writ of certiorari, and the application was granted by order of Justice Souter on June 11, 1997.

That action extended the deadline for filing petition to and including August 23, 1997.

The jurisdiction of the Supreme Court to review the judgment of the First Circuit is invoked under 28 U.S.C. sec. 2101(c).

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STATUTES INVOLVED

The statutes principally involved in this case are Banking Law of the Commonwealth of Puerto Rico, 7 L.P.R.A sec. 151(a); Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594; Code of Commerce

of Puerto Rico, 10 L.P.R.A. sec. 998(h); Public Law 96-221 of March 31, 1980 codified 12 U.S.C. sec. 1735 f-7; 12 U.S.C. sec 86; 18 U.S.C sec. 1961 (6)(B); 31 L.P.R.A. sec. 3343.

The text of all seven statutes is set out in the appendix below.

*

STATEMENT OF THE CASE

This case is about banking businesses between this petitioner and the bank, where the bank in this case prepared a loan contract containing the payment of usurious interest. The contract was for the amount of $35,776.00, interest at a 14% annual rate. The contract dated June 2, 1980 was given to the petitioner by Eugenio Rivera, manager of the bank, and was signed on May 28, 1980 and taken back to the bank.

For the date of the contract the field in Puerto Rico was preempted by Public Law 96-221, approved on March 31, 1980 and effective on April 1, 1980,

codified 12 U.S.C. sec. 1735 f-7.

Regulation Number 19-A of the Board of Regulation of Interest Rates and Financing Charges mentions the following:

> "While the Legislative Assembly of Puerto Rico does not dispose another thing, the annual maximum interest rate that can be collected will be the fixed in the regulation emitted for such purpose by the Federal Home Loan Bank Board in accordance with the dispositions of the Public Law Number 96-221 approved by the Congress and signed by the President of the United States of America on March 31, 1980."

According to that public law the maximum interest rate that could have been collected for June 2, 1980 in conventional mortgage loans, guaranteed by first mortgages was 12.85% per annum.

In 1981 the bank sued this petitioner in the state court of Puerto Rico, case no. CS 81-1138, claiming usurious interests at a 17% annual rate, and through fraud to the court obtained judgment to collect the principal of $35,776.00 and usurious interests for the amount of $24,996.91.

The judgment was affirmed by the Supreme Court of Puerto Rico, but in reconsideration about attorney fees said in a dictum that 17% was the interest that prevailed.

The bank presented a proof of claim, case 87-00304 (SEK), requesting the payment of the amount of $24,996.91 based on the judgment obtained in case no. CS 81-1138. This debtor-plaintiff in that case objected that judgment based on the grounds that the same was obtained through fraud to the state court to collect interest in excess of the allowed by law, and presented a fraud claim for the collection of usurious interests against the bank, case no. 87-00304 (SEK), Adversary 89-0029. Finally the bank collected $24,996.91 of interest according to the judgment in case CS 81-1138, and the Bankruptcy Court denied the fraud claim of this petitioner, concluding that the same was litigated in the state court in case no. 84-552 and is res judicata.

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REASONS FOR GRANTING THE WRIT

I. THERE IS A CONFLICT IN THE APPLICATION OF THE DOCTRINE OF RES JUDICATA TO A MATTER OF BANKING BUSINESS THAT IS OF GREAT PUBLIC INTEREST AND PUBLIC POLICY OF THE COMMONWEALTH OF PUERTO RICO AND THE UNITED STATES

In case no. 87-00304 (SEK), Adversary 89-0029 this petitioner submitted, by order of the court, documents to prove that the bank committed fraud to the court to obtain judgment on its behalf in case no. CS 81-1138 and that it collected interest in excess of the allowed by Public Law 96-221.

The bank in a reply motion to the proof of fraud admitted the following:

> "The most that could be concluded from those documents, on their face, is that the bank obtained a judgment with usurious interest. But usury and fraud are two completely different things. No fraud is committed by filing a complaint claiming usurious interest. Fraud is committed only when factual evidence is mis-represented either by false documents or false testimony."

> "The note was issued by plaintiff debtor on June 2, 1980. At that time the prevailing regulation was 19-A issued on April 2, 1980, to apply to loans granted from April 6, 1980. See Certification by the Commissioner of Financial Institutions, annexed to the motion of plaintiff-debtor. That regulation provided that the maximum rate allowed on conventional loans would be the rate fixed by regulation of the Federal Home Loan Bank Board, according to Public Law 96-221 approved on March 31, 1980. This law appears codified at 12 U.S.C. sec. 1735 f-7."

The Supreme Court of Puerto Rico has established that when usurious interests have been paid the defense of usury does not prescribe. Velázquez v. C. Jiménez, Inc., 113 P.R.R. 866 (1982).

Until the moment of confronting the proof of fraud for the collection of usurious interests which the bank indicates, that party had made believe to all the courts, through fraud and deceit, that it had the right to collect interests at a 17% annual rate, according to regulation 21-A of the Board of Regulation of Interest Rates and

Financing Charges, that it was the maximum interest permitted by law.

The admission of the bank is the best evidence that it committed fraud to the court to collect usurious interest based on a contract that contains the payment of usurious interest.

The Supreme Court of Puerto Rico has resolved that the violation of the disposed in Art. 1652 of the Civil Code, 31 L.P.R.A., sec. 4594 provides the nullity of the usurious pact and may not be made effective in a court of Puerto Rico, J.E. Candal & Co. V. Canino, 86 P.R.R. 481 (1962); Giráu V. González, 73 P.R.R. 393 (1952); Caraballo V. Registrar, 48 P.R.R. 902 (1935); Rivera V. Brignoni, 17 P.R.R. 1157 (1911).

The defense of usury against the bank's claim and the allegation of fraud of this petitioner in case no. 87-00304 (SEK), Adversary 89-0029 (Docket #2) were formally admitted by the bank in the course of a judicial proceeding. They are hereby established against the bank who made the admission with

the same effect as if found by jury after a contest. Blair V. Barlett, 75 N.Y. 150 (1978); McClillan V. Lewis, 35 Cal. App. 64, 169 Pac. 436 (1917); Mosely V. Johnson, 144 N.C. 277, 56 S.E. 929 (1967).

After admitting that they collected usurious interests through the judgment of case CS 81-1138, the bank alleged that it was res judicata in the courts of Puerto Rico and that this petitioner was barred to attack that judgment by fraud to the court because that attack had already been made in case CS 84-552 of the local court in Puerto Rico and that there the fraud claim of this petitioner was judged.

In case CS 84-552 of the local court, the bank made the same fraudulent allegations that it had made in case CS 81-1138 to legalize the collection of usurious interests it had made extrajudicially in September 23, 1981. In the resolution dictated in reconsideration in the referred case, the court expressed that the fraud in the proceedings was not alleged.

In the present case the determination about the application of the doctrine of res judicata has to be made according to the law and the jurisprudence of the courts of Puerto Rico. Texaco Puerto Rico, Inc. V. Medina, 834 F. 2d 242 (1987); In re Centro de Transmisiones Automáticas, 73 B.R. 279 (1987).

It is obvious that the claim of fraud of the here petitioner for collecting interests in excess of the permitted by law never has been judged in the local court, because if the local court had known in that moment, what the bank admitted, it was mandatory to dictate judgment according to Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594.

Under the line of thought of the doctrine of res judicata, in Puerto Rico it has its statuary basis on Art. 1204 of the Civil Code, 31 L.P.R.A. sec. 3343. In Pagán Hernández V. University of P.R., 107 P.R.R. 795 (1978) there appears a good jurisprudence analysis about the doctrine of res

judicata. Said case exposes, quoting Pérez V. Bauzá, 83 P.R.R. 213, 217-218 (1961), the grounds of said doctrine as follows: ". . . on the one hand, the interest of the State in terminating litigations in order that judicial issues may not be perpetuated . . . and, on the other hand, the desirability of not submitting a citizen twice to the inconveniences which the litigation of the same cause entails."

In other words, the fact of the doctrine of res judicata, when applicable is that the judgment entered in a previous action bars the subsequent litigation, between the same parties and on the same cause of action and thing, of a claim which was litigated or adjudicated in the former action. Mercado Riera v. Mercado Riera, 100 P.R.R. 939 (1972); Isaac Sánchez v. Universal C.I.T. Credit, 95 P.R.R. 361, 370 (1967), Capo Sánchez v. Sec. of Treasury, 92 P.R.R. 817 (1965); Sastre v. Cabrera, 75 P.R.R. 1, 3 (1953); Manrique v. Aguayo, et al, 37 P.R.R. 314, 319 (1927).

Thus establishes a salutary public policy towards the convenience that litigations have an end and that there overcome a stage in which peace between the litigants in civil actions prevail. Pagán Hernández V. University of P.R., supra.; In re de Manati, 357 F. Supp. 1253 (1972).

Therefore, the application of res judicata does not proceed if with it an injustice is produced, especially in questions of public policy. Casa Marie Inc. V. Superior Court, 752 F. Supp. 1152 (1990).

In Marrero V. Vázquez Egean, 135 P.R.R. 14 (1994) the Supreme Court of Puerto Rico repeated that "the presumption of res judicata does not apply rigidly if doing so would defeat a principle of public policy or the ends of justice. Piñero Crespo V. Gordillo Gil, 122 P.R.R. 246, 257 (1988).

II. BANKING BUSINESS IS OF GREAT PUBLIC INTEREST AND IS THE POLICY OF THE COMMONWEALTH OF PUERTO RICO TO PREVENT UNSOUND PRACTICES

As we have already mentioned, the

Supreme Court of Puerto Rico has acknowledged several exceptions to the application of the doctrine of res judicata. Among the exceptions are those cases which are permeated by considerations of public order, as are the bank businesses.

The two leading cases are Pérez V. Bauzá, 83 P.R.R. 213 (1961); and Millán v. Caribe Motors Corp., 83 P.R.R. 474 (1961).

In Pérez the Supreme Court of Puerto Rico expressed that:

> "In general terms, it may be affirmed that the rule of res judicata is based on considerations of public policy and necessity: on the one hand, the interest of the State in terminating litigations . . .and on the other hand, the desirability of not submitting a citizen twice to the inconveniences which the litigation of the same cause entails. . . However, the courts have refused to apply rigidly the defense of res judicata if in doing it defeats the ends of justice, especially if reasons of public policy are involved . . .As already stated, the

> doctrine rests upon the basic principle that there should be an end to litigation, but if the rigid application thereof would in practice defeat a right permeated in some way with public interest, the courts are inclined to a solution which would guarantee proper justice instead of rigidly applying a fiction of law which rests fundamentally upon a principle of convenience and procedural order. . .In other words, the rule is not absolute and should always be weighed with the equally salutary principle that justice should be done in every case."

Therefore, the courts in Puerto Rico do not favor that the efficiency and correction of judgments be questioned repeatedly, the general rule has so few exceptions for the application of res judicata, that it should be applied only in very limited circumstances. Marrero V. Vázquez Egean, 135 P.R.R. 14 (1994). Of course, despite this concern, the fact is that exceptional reasons sometimes persist which force courts to push aside the finality of a judgment. One of them takes place when the previous judgment, as it happens in the presented case, causes a serious and manifest injustice to the aggrieved

party. Law calls for a public interest behind the decision of relieving a party of a previous evidently unfair judgment that would usually operate as res judicata. Ramos González V. Felix Medina, 121 P.R.R. 312 (1988). See, to the same effects, Pérez V. Bauzá, supra, and Pagán Hernández V. University de P.R., 107 P.R.R. 795 (1978).

In the present case there exists no only one, but two reasons of public interest to relieve this petitioner from the judgment obtained by the bank in case CS 81-1138: one, the Law of Banks of Puerto Rico, 7 L.P.R.A. sec. 151(a) Declaration of policy and powers of Secretary of the Treasury of Puerto Rico.

> (a) It is hereby declared that is the policy of the Commonwealth of Puerto Rico, that the businesses of all the banking institutions organized under the law of Puerto Rico and of the foreign banks operating in this Island, shall be inspected and regulated by the Secretary so as to insure the sound and safe conduct of said businesses in order to prevent unsound practices and thus maintain the public trust in said

> businesses and protect the public interest and the interest of the depositors, creditors and stockholders. As amended on July 23, 1974, No. 165 Part I, p. 767, sec. 8, eff. July, 1994.

As it can be seen, the bank businesses are a question of public policy in Puerto Rico and of great public interest.

It is a matter which transcends the interest of the parties. For that reason in this case the purity of the judicial process and its institutions is the thing at stake.

The other public interest which is present in this case is the honorability of the courts, that by applying inflexibly and rigidly the doctrine of res judicata have permitted the bank to collect usurious interests in a federal court, based on a contract of an illegal loan, and at the same time has unjustified and unjustly obligated this petitioner to pay illegal interests, when by law the bank does not have the right to collect interests in this case, Art. 1652 of the Civil

Code of Puerto Rico, 31 L.P.R.A. sec. 4594.

The loan contract prepared by the bank on June 2, 1980, is null ab initio, because it contains a pact of interest payments in excess of the permitted by Public Law 96-221, that by order of the Congress of the United States, regulated the maximum interests which was permitted by law to collect in loans, as the one which is object of litigation in this case.

The bank's behavior is one of the unsound practices which the laws pretend avoiding to maintain the public confidence in that so important business.

For being the bank businesses a question of such public interest and public policy of the government of Puerto Rico, the doctrine of res judicata, whose application could defeat a right permeated with reasons of public interest, does not apply in this case.

III. THE LOAN CONTRACT PREPARED BY THE BANK, DATED JUNE 2, 1980 IS COMPLETELY NULL AND VIOLATED BANKING LAWS

The loan contract prepared by the bank, dated June 2, 1980 is a new loan contract which includes a loan of January 18, 1977 for the amount of $25,000.00, reduced to $21,055.00 for the date of the new contract, and another loan of March, 1979 for the amount of $10,000.00. For the loan of 1977 interests at a 9 ½% annual rate were paid, when the maximum allowed by law was 9 ¼%. For the loan of 1979 interests at a 10 ½% annual rate were paid. The information the bank gave this petitioner when it handed over the loan contract of June 2, 1980, was "that the supervisors had criticized those loan because the interests were low compared with the interests of 1980."

The Code of Commerce of Puerto Rico, 10 L.P.R.A. sec. 998(h) disposes that every contract shall be governed by the provisions of the regulation in effect on the date the contract is completed, even if said regulation is subsequently amended or repealed.

The bank violated that disposition of law the moment in which it changed the interest rates of the loans of 1977 and 1979, that were the dates in which this petitioner received money loaned by the bank. In addition to this, the bank with its contract that violated public law 96-221 of March 31, 1980, because the 14% fixed in the same was an interest higher than the 12.85% which permitted the federal law that preempted the field for June 2, 1980, violated again the dispositions contained in 10 L.P.R.A. sec. 998(h) in September, 1981, when it extrajudicially collected from this petitioner interests at a 17% annual rate, and violated Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594 by filing a complaint claiming usurious interest.

In the present case the bank incurred in unsound practices with the only purpose of economically lucrating itself and has obtained through judgment of the local court authorization to collect interests in excess of the permitted by the law in the courts of justice, whose honorability has been

put in danger, because this wrong precedent could be imitated by others that could also support themselves in that fiction of law which obeys fundamentally to a principle of convenience and procedural order, as it is the doctrine of res judicata.

The laws of public policy of bank transactions can not lose efficiency before the defense of res judicata because the public interest and the public confidence suffer with it, when the transgressor of the law is permitted to be successful, that in spite of recognizing to have violated the law, alleges that its violation was already judged and that it can not be judged again.

IV. THERE IS A CONFLICT BETWEEN THE JUDGMENT OF THE COURT OF APPEALS FOR THE FIRST CIRCUIT AND ANOTHER JUDGMENT OF THAT COURT AND JUDGMENTS OF THE SUPREME COURT OF PUERTO RICO

In the case of Medina V. Chase Manhattan Bank, N.A. 737 F. 2d 140, 144 (1984) that is a case in which Medina sued his employer Chase Manhattan Bank, and afterwards requested he be permitted

to waive without prejudice. The court in that occasion granted the desistment with prejudice. Afterwards, Medina presented another case in Florida and there the doctrine of res judicata was applied. The case went in appeal to the First Circuit, where applying the jurisprudence of the local court in Puerto Rico, that Court of Appeals indicated that the doctrine of res judicata, according to the cases of Pérez V. Bauzá, supra. and Millán V. Caribe Motors Corp., supra., does not apply, as an exception, when there are reasons of public order involved. In that case the First Circuit found that the case of Medina did not have any of the elements that were important in Pérez and Millán and therefore affirmed the District Court of the District of Puerto Rico. The present case is different, its about bank businesses and collection of interests higher then the permitted by public law 96-221, 12 U.S.C. sec. 1735 f-7 in violation to the Usury Act of Puerto Rico. That constitutes a bar to the application of the doctrine of res judicata in this case.

The Supreme Court of Puerto Rico has recognized that the doctrine of res judicata has various exceptions; one of the most important exceptions that has been recognized is the presence of fraud when obtaining the first judgment. Figueroa v. Municipality of San Juan, 98 P.R.R. 523 (1970); Bolker v. Superior Court, 82 P.R.R. 785 (1961); Suárez Fuentes v. Superior Court, 88 P.R.R. 133 (1962); Beoan v. Felsen, 442 U.S. 127 (1979).

In the case of proceedings the bank committed fraud to obtain its first judgment in case CS 81-1138 of the local court, so that it could collect the same interests as those it had already collected extrajudicially on September 23, 1981 when it required by letter the payment of 17% annual interests.

If the doctrine of res judicata is finally applied in the present case by this Honorable Supreme Court the ends of justice in a question where there are involved many reasons of public order would be defeated. In re Spinosa's Estate, 225 B. 2d 843 (Cal. 1953);

Universal Court Co. v. City of Fort Lauderdale, 86 So. 2d 366 (Fla. 1953); Commissioner of State Insurance Fund v. Law, 148 N.E. 2d 136 (N.Y. 1958).

In this case there exists an interesting situation that is the following:

In the mortgage promissory note to the bearer for the value of $25,000.00, interests at 9 ½% annual rate, signed by the petitioner on January 18, 1977, before Notary Public Frank Ramirez Ramirez, the bank charged and collected interest in excess of the allowed by law, because Regulation Number 11 of the Board of Regulation of Interest Rates and Financing Charges in its Art. 2(1a) fixed the maximum interest in 9 ¼% per annum in loans as ours.

In the appeal that was presented against the decision of the United States Bankruptcy Court for the District of Puerto Rico in case 87-00304 (GAC), Adversary 89-0029 (Docket #2), before the United States District Court for the District of Puerto Rico, case number

95-1029 (SEC), the Judge that dismissed the appeal, Hon. Salvador E. Casellas, for January 18, 1977 was President of the Board of Regulations of Interest Rates and Financing Charges, and he was the one who signed Regulation Number 11, approved by said board on November 26, 1976 and that entered in force on December 17, 1976. For such reason it was evident to the Honorable Judge due to his own and personal knowledge that the maximum interest which could be charged for January 18, 1977 was 9 $\frac{1}{4}$%, and because of his personal knowledge in bank matters, knew that the bank could not collect usurious interests under the bank laws of Puerto Rico, that as a public policy prohibits the collection of usurious interests in excess of the permitted by law. From the documental proof that was attached to said appeal, especially the complaint in case CS 81-1138, the collection of usurious interest appeared since January, 1977.

In the explanation of title 12, Bank and Banking, it points out, that "a secure banking system is essential

to the prosperity of this nation," an insecured banking system brings, like in this case, injustice, illegal interest, fraud and deceit on the real amount of loans and the real maximum interest allowed by law, and racketeering activity.

In federal jurisdiction, 12 U.S.C. sec. 86 was also intended to protect borrowers from paying excess interest. Landau V. Chase Manhattan Bank, N.A., D.C. N.Y. 1973, 367 F. Supp. 992.

V. THE BANK VIOLATED 18 U.S.C. 1961 (6)(B) BY fRAUDULENTLY INCREASING INTEREST VIOLATING BANKING LAWS

In the present case the bank raised the interests of the loans of 1977 from 9 ½% and 1979 from 10 ½% to 14%, violating the disposed in 10 L.P.R.A., sec. 998(h). Afterwards it extrajudicially collected interests at 17% in September 1981. Those increments were made with the economic profit in mind and with the only purpose of economically affecting this petitioner, so that due to the lack of payment of 17% annual interest foreclose his valuable property.

That action of the bank was considered in Federal courts "enterprise" for purposes of Chapter 96 - Racketeer Influenced and Corrupt Organizations, 18 U.S.C. sec. 1961 (6)(B). Fields V. National Republic Bank of Chicago, D.C. III. 1982, 546 F. Supp. 123.

Another of the bank's illegal action was to send letters by mail to collect interests in excess of the permitted by law to defraud this petitioner as it occurred during the year 1981.

The preparation of the loans illegal contract and the deed of mortgage constitution made by Frank Ramirez Ramirez, Esq., in which he assigned himself a twenty per cent (20%) of attorney fees for the case of judicial execution are part of the bank's enterprise.

In this case like in Velázquez v. C. Jiménez, Inc., 113 P.R.R. 866, 872, 873 (1982), the total amount of interest paid by this petitioner to the bank which total the sum of $14,685.98 should be deducted or reduced

from the total sums of money received in 1977 and 1979 from the bank, pursuant to the express provision of Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 4594.

The judgment entered in case 87-00304 (GAC), Adv. 89-0029 (Docket #2) should be vacated and modified further in order to conform it to the provisions of Art. 1652 of the Civil Code of Puerto Rico.

This court should grant review to explain if the doctrine of res judicata is a good defense for the bank who violated banking laws and collected usurious interest, which is a question of great public interest in Puerto Rico and the United States, and summarily reverse the decision of the Court of Appeals for the First Circuit, and remand this case to the Bankruptcy Court for the District of Puerto Rico with orders to set aside the judgment obtained by the bank in case CS 81-1138 of the local court of Puerto Rico and dictate a new judgment under Art. 1652 of the Civil Code of Puerto Rico, 31 L.P.R.A. sec.

4594 for the principal due, once the interest paid are deducted, and ordering the devolution of twice the amount of the $24,996.91 of usurious interest collected in the Bankruptcy Court procedures in case 87-00304, according to 12 U.S.C. sec. 86, and the continuance of the tort fraud claim against the bank for collection of usurious interest, case no. Adv. 89-0029 (Docket #2), in the District Court of the United States for the District of Puerto Rico for trial by jury.

———— * ————

CONCLUSION

In the alternative, this Petition for Certiorari should be granted or the First Circuit decision should be vacated with instructions to remand to District Court.

Respectfully submitted this 14th day of August, 1997 at San Juan, Puerto Rico.

ADRIAN BONILLA MONTALVO
Loiza Street No. 1505
Suite 141 B
San Juan, Puerto Rico 00911
(787) 268-3271

Petitioner Pro Se

[NOT FOR PUBLICATION]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-2253

ADRIAN BONILLA-MONTALVO,

Appellant,

v.

BANCO BILBAO VIZCAYA-PUERTO RICO
(former Banco Comercial Mayaguez), ET AL

Appellees

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. Salvador E. Casellas, U.S. District Judge]

Before

Torruella, Chief Judge,
Campbell, Senior Circuit Judge,
and Boudin, Circuit Judge.

Adrian Bonilla Montalvo on brief pro se.

Wanda Luna Martinez and Montanez & Alicea, Law Office on brief for appellees.

March 26, 1997

Per Curiam. Upon careful review of the brief and record, we conclude that appellant's fraud claim against the bank was properly dismissed on res judicata grounds. We reach this conclusion essentially for the reasons stated by the bankruptcy court in its decision and order dated December 1, 1994, and by the district court in its opinion and order dated August 20, 1996. Thus, the Puerto Rico courts ruled on the merits of appellant's fraud claim in a prior equitable proceeding between appellant and the bank, and that ruling bars relitigation of the same fraud claim in the present adversary bankruptcy proceeding as between the same parties. See Heiser v. Woodruff, 327 U.S. 726, 736 (1946).

Appellant points out that the other defendants named in the adversary proceeding were not parties to the prior foreclosure and equitable proceedings. That fact is irrelevant to the res judicata effect of those prior proceedings as to the bank. Further, the adversary complaint against the other defendants was dismissed for

failure to state a claim upon which relief could be granted, and appellant has not developed any argument that such dismissal was erroneous. Therefore, the issue is waived.

The bank's request for sanctions is denied, without prejudice to the filing of a separate motion. See Fed. R. App. P. 38; 1st Cir. Loc. R. 39.2.

Affirmed. See 1st Cir. Loc. R. 27.1.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 96-2253

ADRIAN BONILLA-MONTALVO

Appellant

v.

BANCO BILBAO VIZCAYA-PUERTO RICO
(former Banco Comercial Mayaguez), ET AL

Appellees

JUDGMENT

Entered: March 26, 1997

This cause came on to be submitted on the briefs and the original record on appeal from the United States District Court for the District of Puerto Rico.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

/s/ WILLIAM H. NG
Clerk

cc: Adrian Bonilla Montalvo
Wanda Luna Martinez, Esq.

[NOT PUBLISHED]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ADRIAN BONILLA MONTALVO	*	
	*	
Plaintiff-Appellant	*	**Civil No.**
	*	**95-1029**
v.	*	**(SEC)**
	*	**Bankruptcy**
	*	**Appeal**
BANCO BILBAO VIZCAYA, et al.	*	
	*	
	*	
Defendants-Appellees	*	

****

OPINION AND ORDER

This is an appeal from an opinion and order entered on December 2, 1994 by the Bankruptcy Court of the United States for the District Court of Puerto Rico, case no. 87-00304 (GAC), Adversary no. 89-0029 **(Docket #2)**.

The issue on appeal before this Court is whether the Bankruptcy Court erred in dismissing appellant's adversary proceeding in Bankruptcy case no. 89-0029, pursuant to the doctrine of res judicata. Upon careful scrutiny of the parties' arguments, the record before us and the applicable law, we hereby **affirm** the Bankruptcy Court's

decision to dismiss the adversary proceedings case no. 89-0029. Accordingly, plaintiff-appellant's appeal is hereby **DISMISSED.**

Procedural Background

On February 19, 1987, plaintiff-appellant Adrián Bonilla Montalvo ("appellant" or "Bonilla") filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code, case no. 87-00304 (SEK) (Docket #4, Appellant's Brief, p. 2). In said case codefendant Banco Comercial de Mayaguez, now named Banco Bilbao Vizcaya (hereinafter "the Bank"), filed a proof of claim for the amount of $24,996.00, which established that its credit arose from the judgment entered by the Superior Court of Puerto Rico, Mayaguez Part, in case no. CS 81-1138 (Appellant's Brief, Exhibit VI).

Appellant objected to the Bank's proof of claim and filed a tort action requesting jury trial against the bank and other codefendants, case no. 87-00304(SEK), adversary no. 89-0029. On June 26, 1991, a hearing was held

to determine if the Court had jurisdiction to entertain the issue between the parties. That same day the Bank offered and the Court admitted a certified copy of the judgment entered in the state court, case number CS 81-1138.

Plaintiff-appellant objected to the evidence offered, on the grounds that the Bank committed fraud before the state court to obtain judgment in its behalf. The Court granted plaintiff-appellant time to submit the proof of fraud to the Court, when the Bank obtained the first judgment in its favor in case no. CS 81-1138. On April 22, 1992 the Bankruptcy Court entered a judgment in case no. Adv. 89-0029, granting full faith and credit, based on the doctrine of res judicata, to the judgment obtained by the Bank in the state court, case no. CS 81-1138, and dismissed case no. Adv. 89-0029. (Appellant's Brief, p. 3)

Appellant appealed the judgment, and in case no. 92-2333 (JAF) the Honorable Judge Jose A. Fusté remanded

the adversary proceeding back to the Bankruptcy Court on July 8, 1993. He instructed the parties to request the parties to furnish the local decisions allegedly documenting plaintiff-appellant's previous litigation of fraud in case no. CS 84-552 of the local court. In the Matter of Adrian Bonilla Montalvo, 157 B.R. 510, 514 (D. Puerto Rico 1993).

Upon remand, on December 2, 1994, the Honorable Judge Gerardo A. Carlo entered a decision and order dismissing Adv. no. 89-0029 with prejudice, pursuant to the doctrine of res judicata. (Appellee's Brief, Exhibit F). Plaintiff-appellant now appeals Judge Carlo's decision.

Applicable Law/ Analysis

The Bankruptcy Court's findings of fact shall be upheld unless they are clearly erroneous, and the Bankruptcy Court's conclusions of law shall be reviewed de novo. T.I. Fed. Credit Union v. Delbonis, 72 F.3d 921, 928 (1st Cir. 1995).

Appellant claims that the issue

of whether the Bank committed fraud in the proceedings in CS 81-1138 was not litigated in CS 84-552. (Appellant's brief, p. 4) In his complaint in the Bankruptcy adversary proceeding Bonilla alleges that the Bank committed fraud on the Court by misrepresenting to the Superior Court the law which applied to determine the allowable interest rate. Bonilla alleges that the Bank's mispresentations allowed it to collect interest in excess of the rate allowed by law.

> The Bankruptcy Court rejected appellant's arguments, as if noted:
>
> Based on Bonilla's arguments and the documents submitted by the Bank and Bonilla, it becomes clear that the fraud in the proceedings that Bonilla is now alleging is the same fraud that was alleged in case CS 84-552, which was an action brought by Bonilla to obtain relief from the judgment obtained in CS 81-1138. Bonilla's allegations all relate to what he alleges to be a fraud that condemned him to pay interest at the rate of 17% in violation of the usury law. (Opinion and Order of Hon. Judge Carlo, Dec. 2, 1994, p. 4-5)

As noted above, the Bankruptcy

Court held that the fraud issue had been fairly litigated in the Superior Court in CS 84-552, and that the Superior Court of Mayaguez had dismissed Bonilla's complaint on March 11, 1986. (Appellee's Brief, Exhibit A) On April 3, 1986, the Superior Court denied Bonilla's motion for reconsideration, since it concluded that Bonilla had failed to show fraud in the complaint, and that the statements about the applicable interest rates were frivolous. Id. (Exhibits B,C). On May 8, 1996, the Supreme Court of Puerto Rico issued a resolution declining to hear the case. (Exhibit D) Pursuant to the above analysis, the Bankruptcy Court dismissed appellant's claim.

Under the rule of res judicata --sometimes called "claim preclusion"-- a valid and final personal judgment is conclusive of a claim. If the judgment is for the plaintiff, the claim is extinguished and merged in the judgment; if the judgment is for the defendant, plaintiff is barred from reasserting the claim. Restatement of Judgments 2d § 17. Claim preclusion

applies "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." Cromwell v County of Sac, 94 U.S. 351, 352 (1877); see also Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 329 (1971); Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979).

Notwithstanding the federal court's interpretation of the res judicata doctrine, the Surpeme Court has emphasized that federal courts cannot employ their own rules of res judicata in determining the effect of state judgments. Rather, federal courts must accept the rules chosen by the state from which the judgment is taken. Kremer v. Cheimcal Construction Corp., 456 U.S. 461, 481-482 (1982).

With this in mind, we must examine the rules of res judicata as interpreted by the Supreme Court of the Commonwealth of Puerto Rico. The doctrine of res judicata is codified in 31 L.P.R.A.

§3343. This sections reads, in pertinent part:

> In order that the presumption of the res judicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes and persons of the litigants, and their capacity as such.

The Supreme Court of Puerto Rico has frequently reiterated these requirements in their application of the res judicata doctrine. A & P General Contractors, Inc. v. Asociación Caná, Inc., 110 D.P.R. 753, 763 (1981); Negrón v. C.I.T. Financial Services Corp., 111 D.P.R. 657, 661 (1981)

Upon review of this doctrine, this Court finds that the doctrine of claim preclusion applies to the present case. Judge Fustè cogently noted in a previous proceeding on this case that:

> the fundamental doctrine of res judicata rests at the core of our judicial system. The doctrine prohibits a claim from being litigated repetitiously outside of the normal appeals process,

> and the goals of finality and certainty are furthered by the application of the doctrine. And standing alongside the fundamental doctrine of res judicata is the constitutional mandate that all courts in the United States must give full faith and credit to the decisions of other courts, be they territorial, state, federal, or special tribunal. U.S. Const. Art. IV, §1.[1]
>
> In the Matter of Adrian Bonilla Montalvo, 157 B.R.510, 512-513 (D. Puerto Rico 1993)

As an exception to the res judicata doctrine, a judgment obtained with the

---

[1] The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

aid of fraud does not deserve the deference usually given a case by other courts. Id. at 513. A party may collaterally attack a previous judgment by proving that the previous decision arose from fraud. In re Bloomer, 32 B.R. 25, 26 (Bankr. W.D. Mich. 1983). However, federal courts have held that the existence of previous state proceedings in which fraud was pled precludes a subsequent, collateral attack of the original decision that was allegedly based on fraud. Heiser v. Woodruff, 327 U.S. 726, 736 (1946); United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 660 (1st Cir. 1990).

The First Circuit has dealt with similar legal and factual issues on prior occasions. The Court of Appeals held in In re Giorgio, 862 F.2d 933, 936 (1st Cir. 1988), that a state court judgment cannot be set aside by a federal bankruptcy court if under state legislative or case law, the state judgment is valid. The Court noted: "[I]n respect to a state court judgment, [it] is itself a matter of state law, 28 U.S.C. §1738...[T]here can be no

life to a state law claim, when a state court in a related prior proceedings authoritatively says that none exists." Id. at 936 (quoted in In re Bonilla Montalvo, 157 B.R. at 513.

In view of this holding, we find that appellant's fraud claim must fail, since it has already been fairly and conclusively litigated in Puerto Rico's Commonwealth Courts. The doctrine of res judicata and claim preclusion precludes us from espousing a different outcome. Pursuant to our above discussion, plaintiff-appellant's appeal is hereby **DISMISSED**. Judgment shall follow accordingly.

SO ORDERED.

In San Juan, Puerto Rico, this 20th day of August, 1996.

/s/ SALVADOR E. CASELLAS
United States District
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ADRIAN BONILLA MONTALVO	*	
	*	
Plaintiff	*	**Civil No.**
	*	**95-1029(SEC)**
v.	*	**Bankruptcy**
	*	**Appeal**
BANCO BILBAO VIZCAYA, et al.	*	
	*	
Defendants	*	

****

JUDGMENT

Pursuant to our opinion and order of even date, plaintiff-appellant's appeal is hereby **DISMISSED.** Judgment is hereby entered accordingly.

SO ORDERED.

In San Juan, Puerto Rico, this 20th day of August, 1996.

/s/ SALVADOR E. CASELLAS
United States District
Judge

[NOT PUBLISHED]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:	
ADRIAN BONILLA MONTALVO:	
Debtor	Case No. 87-00304 (GAC)
	Chapter 11
ADRIAN BONILLA MONTALVO:	
Plaintiff	Adv. No. 89-0029
v.	
BANCO COMERCIAL DE MAYAGUEZ, NEFTALI ROSA, EUGENIO RIVERA, DAGOBERTO MONTALVO IGNACIO, NECA MORTGAGE, EDDIE ACARON AND FRANK RAMIREZ RAMIREZ	
Defendants	DECISION AND ORDER

BACKGROUND

On August 2, 1982, the Superior Court of Puerto Rico, Mayaguez Part entered a judgment in case CS 81-1138 against Adrian Bonilla Montalvo ("Bonilla") for $35,776 plus interest after November 4, 1981 at the rate of 17%. The plaintiff was Banco Comercial de Mayaguez, now named Banco Bilbao Vizcaya Puerto Rico (hereinafter "Bank").

The judgment arose from Bonilla's default on a loan provided by the Bank to Bonilla. The decision granting the Bank judgment against Bonilla in the amount of $35,776 plus interest at the rate of 17% was affirmed by the Supreme Court of Puerto Rico on January 20, 1983.

On February 19, 1987, Bonilla filed a bankruptcy petition under Chapter 11. On April 2, 1987, the Bank filed a claim in the amount of $24,996 as the amount owing on the judgment obtained in CS 81-1138. Bonilla filed this adversary proceeding on February 17, 1989, alleging that the state court proceedings in CS 81-1138 were tainted by fraud. Bonilla requests that this court set aside the judgment in favor of the Bank in CS 81-1138.

The Bank contends that prior to filing bankruptcy, Bonilla brought an action in state court, CS 84-552, alleging that the judgment in CS 81-1138 was obtained through fraud. The Bank indicates that CS 84-552 was dismissed by the Superior Court, Mayaguez Part and the Supreme Court of Puerto Rico

affirmed the dismissal.

On April 22, 1992, the Honorable Sara de Jesús dismissed this adversary complaint with prejudice finding that Bonilla had not submitted evidence of fraud and that because the state court judgment was entitled to full faith and credit, the issue of fraud was res judicata. As to the other defendants, Judge de Jesús found that Bonilla failed to state a claim upon which relief could be granted. Bonilla appealed the decision to the U.S. District Court for the District of Puerto Rico.

The Honorable Judge Jose A. Fusté remanded the adversary proceeding back to the bankruptcy court on July 8, 1993, "with instruction to request the parties to furnish the local decisions allegedly documenting debtor's previous litigation of fraud as it pertains to this case." In the Matter of Montalvo, 157 B.R. 510, 512 (D. Puerto Rico 1993). Judge Fusté's decision further states that "[i]f fraud has been previously argued, a dismissal with prejudice would be in order on res judicata grounds. If

fraud has not been previously litigated, the bankruptcy court must schedule a hearing on the fraud issue and proceed to decide the case according to relevant law." Id.

Pursuant to the instructions of the District Court, Judge de Jesús held a status conference on October 19, 1993, to address the remand order. The parties were ordered to file the appropriate documentation pertaining to whether the state courts had considered the issue of fraud.

On December 22, 1993, the Bank filed a motion submitting the state court documents in support of its position that the issue of fraud was previously litigated. Bonilla filed a motion in opposition on January 7, 1994.

On April 27, 1994, Bonilla moved for the issuance of a writ of mandamus in the District Court against Judge de Jesús directing her to render a decision on the fraud issue. On September 6, 1994, Judge de Jesús entered

an order disqualifying herself from this adversary proceeding because Bonilla had filed suit seeking the writ of mandamus ordering her to resolve the remanded issues. The case was then transferred to this court's docket.

DISCUSSION

In his opinion remanding this case back to the bankruptcy court, Judge Fusté summarized the doctrine of res judicata as it relates to a collateral attack on a state court judgment in a federal bankruptcy court. Judge Fusté held that while res judicata prohibits a claim from being litigated outside of the normal appeals process, there is an exception to the application of the principle where it is alleged that there was fraud underlying the original judgment. In the Matter of Montalvo, 157 B.R. at 512-13. But even in this situation, "if the fraud at issue was the subject of litigation in a previous suit, such a suit itself has a preclusive or res judicata effect." Id. at 513.

On December 22, 1993, the Bank submitted by motion the state court

documents in support of its contention that fraud was previously litigated in this case. The Bank contends that the documents submitted show that Bonilla brought an action in state court, case CS 84-552, seeking relief from the judgment obtained by the Bank in CS 81-1138. In CS 84-552, the Bank contends that the state court was presented with and decided the issue of whether the Bank had obtained the judgment in CS 81-1138 by fraud.

In his response of January 7, 1994, Bonilla contends that the issue of whether the Bank committed fraud in the proceedings in CS 81-1138, was not litigated in CS 84-552. Bonilla argues that "the fraud in the proceedings was committed for the creditor defendant to obtain judgment in their behalf in the collection of usurious interest." In his complaint in this adversary proceeding, Bonilla alleges that the Bank committed fraud on the court by misrepresenting to the Superior Court the law which applied to determine the allowable interest rate. Bonilla alleges that the Bank's misrepresentations

allowed it to collect interest in excess of the rate allowed by law.

Based on Bonilla's arguments and the documents submitted by the Bank and Bonilla, it becomes clear that the fraud in the proceedings that Bonilla is now alleging is the same fraud that was alleged in case CS 84-552, which was an action brought by Bonilla to obtain relief from the judgment entered in CS 81-1138. Bonilla's allegations all relate to what he alleges to be a fraud that condemned him to pay interest at the rate of 17% in violation of the usury law.

When Bonilla defended in CS 81-1138, the original lawsuit in which the Bank obtained judgment against him Bonilla responded to the Bank's motion for summary judgment indicating as defenses to the Bank's action that he had been involved in an accident and that a fire had occurred destroying his home. Bonilla did not deny that he owed the money but rather contended that he was unable to pay at the time. The Superior Court rejected Bonilla's defenses and

entered judgment in favor of the Bank.

Based on the loan documents, the Superior Court determined that the applicable interest rate was 14% or the maximum allowed by law. The Court determined that the loan was evidenced by a demand note and determined as a matter of law that the maximum interest rate allowed for demand notes was 17%. Accordingly, the Superior Court allowed interest at the rate of 17%. The Supreme Court of Puerto Rico subsequently affirmed the Superior Court's determination of the allowable interest rate.

Bonilla filed CS 84-552 seeking relief from the judgment obtained by the Bank in CS 81-1138. With respect to fraud on the court, in paragraph four of the second cause of action in Bonilla's amended complaint in CS 84-552, Bonilla alleged that the fraud on the court consisted of the Bank indicating in its motion for summary judgment that the demand note in CS 81-1138, provided for recovery of interest upon the loan at a rate of 14% or the maximum interest

allowed by law. Bonilla alleged that in representing to the court that on the expiration of the loan term, the loan converted to a demand note and that it was regulated under a particular regulation that permitted interest at 17%, the Bank committed fraud.

In a decision on summary judgment in CS 84-552 issued on March 11, 1986, the Superior Court discussed both the issue of fraud on Bonilla and fraud on the court. On the first cause of action, the Court stated that "[Bonilla] imputes fraud to the [Bank]. When it deals with fraud between the parties, the motion for relief must be presented within the term of 6 months, which was not done. Municipio de Coamo v. Tribunal Superior, 99 D.P.R. 932 (1971)." (translation ours).

On the second cause of action the court stated that:

> Fraud to the Court is alleged. The statement is frivolous not only because it is not true that the promissory note calls for the collection of 14% annual interest, (it also states "or at the maximum interest rate that the Board of Regulation

> of Interest Rates and Financing Charges of Puerto Rico permits to be charged to the subscribing party while the present obligation is not paid. . .)" but because likewise this Court as well as the Honorable Supreme Court of Puerto Rico considered the matter, expressing the Honorable Supreme Court that interest at 17% was the "rate permitted at that time."
> Judgment of January 20, 1983, number 0-82-547.

(translation ours.) Accordingly, the Superior Court dismissed Bonilla's complaint.

On April 3, 1986, the Superior Court denied Bonilla's motion for reconsideration. The Court indicated that Bonilla failed to show fraud in the complaint and that the amended complaint was not accepted. The court also found that the statements about the applicable interest rates were frivolous. On may 8, 1986, the Supreme Court of Puerto Rico issued a resolution declining to hear the case.

A party may not request the bankruptcy court to reexamine issues determined by a previous judgment.

Heiser v. Woodruff, 66 S. CT. 853, 858 (1946). "Nor can an attack be sustained on a judgment allegedly procured by fraudulent representations of the plaintiff, when the charge of fraud has been rejected in previous litigations by the parties to the suit in which the judgment was rendered or their representatives." Id. (citations omitted). If the issue of fraud was raised and decided against the party, the principles of res judicata preclude the revival of the litigation in bankruptcy. Id. at 857.

Bonilla alleged in state court that the bank had defrauded him and that the Bank had defrauded the court to obtain usurious interest. Both the Superior Court and the Supreme Court of Puerto Rico rejected these arguments The Superior Court and the Supreme Court of Puerto Rico determined that interest at the rate of 17% was the rate permitted by law. Accordingly, this issue is res judicata and may not be relitigated.

The issue of fraud on the court is res judicata notwithstanding that

Bonilla's amended complaint in CS 84-552 was not accepted by the Superior Court. The Superior Court's refusal to accept the amended complaint and the Court's decision dismissing the complaint was affirmed by the Supreme Court of Puerto Rico. Under the Laws of Puerto Rico, the doctrine of res judicata precludes a party from "relitigating the questions they raised or could have raised in the petition for relief from judgment." Figueroa v. Banco de San Juan, 108 Official Translations of the Supreme Court of Puerto Rico 723, 729, 108 D.P.R. 680 (1979) (citations omitted). See also Arecibo Radio Corp. v. Com. of Puerto Rico, 825 F.2d 589, 592 (1st Cir. 1987); Rocca v. Royal Bank of Canada, P.R. Inc., 726 F. Supp. 15, 17 (D. Puerto Rico 1989). Accordingly, Bonilla is precluded from relitigating issues that were raised in his amended complaint in CS 84-552, even though the complaint was not accepted by the state courts.

Bonilla's allegations of fraud also suggest that the state courts erred in determining the applicable interest

rate. A party can not, however, "resort to the mechanism of an independent action. . . [for] the purpose of substituting the proceeding for review or of providing an additional relief against an erroneous judgment." Figueroa v. Banco de San Juan, 108 Official Translations of the Supreme Court of Puerto Rico at 729 (citations omitted). Judicial error is excluded as a ground for relief from judgment. Id. at 730 (citations omitted). Thus, Bonilla's claim that in determining the interest rate, the state courts adopted and applied a law that had been repealed is not a basis for relitigating in this court the state courts' determination of the allowable interest rate. Whether or not the state courts erred in determining the allowable interest rate, the determination by the state courts of the appropriate rate is not a basis for an argument that the judgment was obtained by fraud.

This court concludes that Bonilla's claim that the Bank committed fraud in the proceedings to obtain interest in excess of that allowed by the usury

law is res judicata.

ORDER

Bonilla's adversary complaint shall be, and it hereby is, dismissed with prejudice.

Judge de Jesús disqualified herself from this adversary proceeding, but not from the underlying bankruptcy case. Accordingly, the clerk will refer the bankruptcy case back to Judge de Jesús for any further action that may be required.

IT IS SO ORDERED.

Dated at San Juan, Puerto Rico this 1st day of December, 1994.

By the Court:

/s/ Gerardo A. Carlo
U.S. Bankruptcy Judge

cc. Adrian Bonilla
L.R. Santos
M. Bigas Mendez
Eddie Acaron
UST
M. Figueroa
D. Mayo
Opening for
change in dkt
of judges name
Lillian Morales
Lizette

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

In re	:	
	:	
ADRIAN BONILLA MONTALVO	:	CASE NO.
	:	87-00304(GAC)
Debtor-Plaintiff	:	CHAPTER 11
	:	
v.	:	AP NO: 89-0029
	:	
BANCO COMERCIAL DE MAYAGUEZ, NEFTALI ROSA, EUGENIO RIVERA DAGOBERTO MONTALVO IGNACIO, NECA MORTGAGE, EDDIE ACARON AND FRANK RAMIREZ RAMIREZ	:	
	:	
Defendants	:	
	:	

J U D G M E N T

In accordance with Fed. R. Bankr. P. 9021, and for the reasons set forth in the Decision and Order entered by the Honorable Gerardo A. Carlo on December 2, 1194, it is now

ADJUDGED and **DECREED** that Judgment be and it hereby is entered dismissing the instant adversary proceeding with prejudice, and it is further

ADJUDGED and **DECREED** that the legal case number 87-00304 be referred to

the Honorable Sara de Jesus for any further action that may be required.

San Juan, Puerto Rico, this 8th day of December, 1994.

CELESTINO MATTA-MENDEZ
CLERK OF COURT

/s/ Litza M. Cardona, Chief
Deputy Clerk

cc. Adrian Bonilla
L.R. Santos
M. Bigas Mèndez
Eddie Acaron
UST
M. Figueroa
G. Mayo

PUERTO RICO STATUTES

Banking Law of the Commonwealth of Puerto Rico, 7 L.P.R.A. § 151(a)

§ 151. Declaration of policy and powers of Secretary of the Treasury of Puerto Rico

(a) It is hereby declared that it is the policy of the Commonwealth of Puerto Rico that the businesses of all the banking institutions organized under the laws of Puerto Rico and of the foreign banks operating in this Island, shall be inspected and regulated by the Secretary so as to insure the sound and safe conduct of said businesses in order to prevent unsound practices and thus maintain the public trust in said businesses and protect the public interest and the interest of the depositors, creditors and stockholders.

Civil Code of Puerto Rico, Usury Act 31 L.P.R.A. sec. 4594

§ 4594. Receipt of money or goods at excessive rate of interest; enforcement of contracts

No person, except as authorized by section 4593 of this title, shall

demand or receive, directly or indirectly, any money or goods, at any greater rate of interest for the loan or extension of time of said loan, that the rate provided for in sections 4591 -4599 of this title. Nothing in these sections shall be taken to prohibit the sale of goods for cash at a less price than for credit.

No contract wherein or whereby there is reserved, accepted or secured, or agreed to be reserved, accepted or secured, any greater rate of interest than is allowed by sections 45914599 of this title may be made effective in any court in Puerto Rico, except for the amount of the principal due; and the court must provide, furthermore, in the judgment directing the debtor to pay the principal, that the creditor shall recover only seventy-five (75) percent of said principal and that the remaining twenty-five (25) percent shall be awarded to and recovered by the Commonwealth of Puerto Rico, who may obtain a writ of execution, in the same manner as the plaintiff, but without precedence over the amount awarded to

the latter, to make effective the twenty-five (25) percent in that manner awarded.

The rights herein defined shall not be waived. -Civil Code, 1930, § 1652; Const., art. IX, § 4; July 24, 1952, No. 11, p. 30, eff. July 25, 1952.

Code of Commerce of Puerto Rico, 10 L.P.R.A. § 998(h)

§ 998h. Effective regulations

The provisions of the regulations approved under section 998a of this title shall not be applicable either to contracts entered into or to obligations prior to the effective date of the regulations. Every contract shall be governed by the provisions of the regulation in effect on the date the contract is completed, even if said regulation is subsequently amended or repealed. -Oct. 15, 1973, No. 1, p. 849, § 9, eff. Oct. 15, 1973.

Civil Code of Puerto Rico,
31 L.P.R.A. § 3343

§ 3343. Destruction of presumptions; res judicata

Presumptions established by law may be destroyed by proof to the contrary, except in the cases in which it is expressly prohibited.

Only a judgment obtained in a suit for revision shall be effective against the presumption of the truth of the res judicata.

In order that the presumption of the res adjudicata may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.

In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the res adjudicata shall be valid against third persons, even if they should not have

litigated.

It is understood that there is identity of persons whenever the litigants of the second suit are legal representatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of prestations among those having a right to demand them, or the obligation to satisfy the same. -Civil Code, 1930, § 1204.

FEDERAL STATUTES

Public Law 96-221 of March 31, 1980 codified 12 U.S.C. § 1735 f-7

§ 1735f-7. Exemption from State usury laws; applicability

(a) The provisions of the constitution of any State expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved by lenders and the provisions of any State law expressly limiting the rate or amount of interest, discount points, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, or advance which in insured under subchapter I or II of this chapter.

(b) The provisions of subsection (a) of this section shall apply to loans, mortgages, or advances made or executed in any State until the effective date (after December 21, 1979) of a provision of law of that State limiting the rate or amount of interest, discount points, or other charges on any such loan, mortgage, or advance.

(June 27, 1934, c. 847, Title V, § 529, as added Dec. 21, 1979, Pub. L. 96-153, Title III, § 308, 93 Stat. 1113.)

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12 U.S.C. § 86

§ 86. Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by section 85 of this title, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: Provided, That such action is commenced within two years from the time the usurious transaction occurred. (R.S. § 5198.)

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18 U.S.C. § 1961(6)(B)

§ 1961. Definitions

As used in this chapter--

(6) "unlawful debt" . . .(B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;